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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,454	04/12/2006	Ko Inagaki	2006_0418A	3144

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Washington, DC 20005-1503

EXAMINER
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STIMPERT, PHILIP EARL

ART UNIT	PAPER NUMBER
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3746

NOTIFICATION DATE	DELIVERY MODE
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04/14/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ddalecki@wenderoth.com  
coa@wenderoth.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/575,454	INAGAKI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Philip Stimpert	3746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Drafts, Person's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/10/10</u>  | 6) <input type="checkbox"/> Other: _____                          |

## **FINAL REJECTION**

### ***Status of the Claims***

1. The Examiner acknowledges receipt of Applicant's amendments, arguments and remarks filed with the Office on 27 January 2011 in response to the Non-Final Office Action mailed by the Office on 28 October 2010. Per Applicant's response, Claims 1 and 16 have been amended. Claims 21 and 22 are cancelled. All other claims remain in their previously presented form. Claims 1-20 are pending in the instant application and currently being examined. The Examiner has carefully considered all of Applicant's arguments and remarks, and they will be addressed below.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,361,290 to Ide (Ide) in view of US Patent 4,911,619 to Todescat et al. (Todescat).

4. Regarding claim 1, Ide teaches (see Fig. 12) a hermetic compressor comprising a hermetic container (1) storing an oil (23), and a compression element (2) accommodated in the hermetic container (1) and compressing a refrigerant gas (see col. 10, ln. 61). Ide teaches that the compressing element (2) comprises a compressing chamber (21), a cylinder (4) forming the compressing chamber (21), a piston (5)

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inserted into the cylinder (4) and reciprocating, a suction muffler (8) whose one end (8b) communicates (col. 11, ln. 38-42) with the compression chamber (21). Further, Ide teaches that the suction muffler (8) has a sound deadening space (the cavity discussed in col. 12, ln. 28 and visible in the drawings, for instance Fig. 1) having a first surface (any of the side walls of thereof), an inlet pipe (8a) having one end opening to the sound deadening space along the first surface (in the absence of suction pipe 9), an outlet pipe (8b) having one end opening in the sound deadening space and the other opening to the compression chamber (at 22, col. 11, ln. 5-13), a gas flow forming part (8a and 8b, as shown in Fig. 1) forming a gas flow flowing in a constant direction (namely into or out of the muffler 8, parallel to the axis of the relevant port) in the sound deadening space. Ide teaches that the inlet pipe (8a) and the outlet pipe (8b) are separate and disconnected and together form the gas flow forming part. Finally, Ide teaches an oil discharge opening (col. 12, ln. 65 through col. 13, ln. 2) provided at a lower part of the sound deadening space (and therefore in a downstream side, since the flow starts at the top of the sound deadening space at inlet 8a). Ide does not teach that the outlet pipe has a right-angle bend sound deadening space. Todescat teaches (see Fig. 1) a hermetic compressor including a suction muffler that has an outlet pipe (115) with a right angle bend in a sound deadening chamber (see Fig. 1). Todescat teaches that this provides fluid communication between the sound deadening chamber and the compression chamber, and that it has a muffling function. Where a claimed improvement on a device or apparatus is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of

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prior art ready for improvement," the claim is unpatentable under 35 U.S.C. 103(a). Ex Parte Smith, 83 USPQ.2d 1509, 1518-19 (BPAI, 2007) (citing KSR v. Teleflex, 127 S.Ct. 1727, 1740, 82 USPQ2d 1385, 1396 (2007)). Accordingly Applicant claims a combination that only unites old elements with no change in the respective functions of those old elements, and the combination of those elements yields predictable results; absent evidence that the modifications necessary to effect the combination of elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a). Ex Parte Smith, 83 USPQ.2d at 1518-19 (BPAI, 2007) (citing KSR, 127 S.Ct. at 1740, 82 USPQ2d at 1396.

Accordingly, since the applicant[s] have submitted no persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a) because it is no more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one known element for another.

5. Regarding claim 2, Ide teaches an inlet pipe (8a) whose one (interior) end opens to the sound deadening space, and whose other end opens to the hermetic container (1, see Fig. 13). Further, the inlet pipe (8a) is located on a right end face of the sound deadening space (as shown in Fig. 1) and thereby constitutes the gas flow forming part. The examiner notes that "a thin part" is extremely broad, and reads on the sound deadening space as a whole. The inlet and outlet pipe openings are thus considered to be provided at a thin part of the sound deadening space.

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6. Regarding claim 3, Ide teaches that the outlet pipe (8b) opens while being extended to a lower face of the sound deadening space and thereby constitutes the gas flow forming part.

7. Regarding claim 4, as shown in Fig. 5, Ide teaches that the outlet pipe (8b) is substantially near, and thus adjacent, an upper end face (8d) of the sound deadening space.

8. Regarding claims 5 and 8-10, as shown in Fig. 13, Ide teaches that the lower face of the sound deadening space is constituted by a substantially horizontal face. Further, though Ide does not explicitly show the oil discharge opening, it would be provided at an end part of the lower face of the sound deadening space (note that end part may refer to the face as a whole, in its capacity as the lower end of the sound deadening space).

9. Regarding claims 6, 7, and 11-13, Ide teaches that the suction muffler is formed with an annular gas passage between the outer wall (82) and the outlet pipe (8b).

10. Regarding claim 14, Ide teaches a visor (8f) which protrudes as an eaves above the discharge opening.

11. Regarding claim 15, Ide teaches that the opening of the outlet pipe (8b) is provided in the lower central portion (82) of the sound deadening space, which may be considered the thin part thereof.

12. Claims 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US PGPub 2004/0179955 to Lee (Lee) in view of Todescat.

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13. Regarding claim 16, Lee teaches (see Fig. 1) a hermetic compressor (100) comprising a hermetic container (500) for storing oil (paragraph 54) and a compressing element (300) in the container for compressing a refrigerant gas. Lee teaches that the compressing element (300) comprises a cylinder (31), a piston (34) reciprocating in the cylinder, and a compression chamber (31a) defined by the cylinder and piston. Lee further teaches a suction muffler (400) having a sound deadening space (45) defined within a top wall (not labeled), side walls (41, 42) and a bottom wall (in which 48 is formed). Lee teaches that the suction muffler comprises an inlet pipe (46) having an internal opening (at the top thereof) that opens into the sound deadening space (45) and an external opening (at the bottom thereof) for ingress of the refrigerant gas. Lee further teaches that the suction muffler comprises an outlet pipe (41) that is separate and disconnected from the inlet pipe (46), the outlet pipe having an internal opening (41b) that opens into the sound deadening space and an external opening (41a) for egress of the refrigerant to the compression chamber (see Fig. 1). Lee further teaches an oil discharge opening (48) provided at a bottom part of the sound deadening space (45) adjacent the near sidewalls such that oil pooled near the junction of the sidewalls and bottom wall can discharge through the opening (48). Lee also teaches that the gas flows in a constant circumferential direction along the side walls due to the placement of the inlet and outlet pipe openings. Finally, Lee teaches that the internal opening of the inlet pipe is disposed in a location within the sound deadening space (45) so as to constitute a gas flow forming part that, in cooperation with the outlet pipe, causes a flow of the refrigerant gas along the bottom part in a constant downward direction toward the

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oil discharge opening to cause the oil to pool thereat. Lee does not teach that the outlet pipe has a right-angle bend sound deadening space. Todescat teaches (see Fig. 1) a hermetic compressor including a suction muffler that has an outlet pipe (115) with a right angle bend in a sound deadening chamber (see Fig. 1). Todescat teaches that this provides fluid communication between the sound deadening chamber and the compression chamber, and that it has a muffling function. Where a claimed improvement on a device or apparatus is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement," the claim is unpatentable under 35 U.S.C. 103(a). *Ex Parte Smith*, 83 USPQ.2d 1509, 1518-19 (BPAI, 2007) (citing *KSR v. Teleflex*, 127 S.Ct. 1727, 1740, 82 USPQ2d 1385, 1396 (2007)). Accordingly Applicant claims a combination that only unites old elements with no change in the respective functions of those old elements, and the combination of those elements yields predictable results; absent evidence that the modifications necessary to effect the combination of elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a). *Ex Parte Smith*, 83 USPQ.2d at 1518-19 (BPAI, 2007) (citing *KSR*, 127 S.Ct. at 1740, 82 USPQ2d at 1396. Accordingly, since the applicant[s] have submitted no persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a) because it is no more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one known element for another.

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14. Regarding claim 17, Lee teaches that the internal opening of the inlet pipe is disposed so that the gas flow forming part causes the refrigerant gas to flow along a generally annular path (shown by the arrows in Fig. 4, the annular path is defined by the space between 41 and 42) within the sound deadening space (45).

15. Regarding claims 18 and 19, Lee teaches that the sound deadening space comprises an upper portion (defined by the cylindrical portion of 42) and a lower portion (47 and spherical transition from 42 to 47), the lower portion having a center portion (47) which is thinner than the side portions (hemispheres thereabove, delimited by any arbitrary diameter of the axial cross section) which are arranged on opposite sides of the central portion.

16. Regarding claim 20, Lee teaches a visor (43) which protrudes as an eaves above the oil discharge opening.

### ***Response to Arguments***

17. Applicant's arguments filed 27 January 2011 have been fully considered but they are not persuasive.

18. With respect to the argument (page 7) that Todescat does not teach separate and disconnected inlet and outlet pipes, these limitations are taught by the base references, Ide (Fig. 1) and Lee (Fig. 4). Effectively, each base reference teaches that it is desirable to have fluid flow into an open chamber of a muffler. The modification envisioned by the combination then would modify the discharge pipe from that open chamber with a right angle bend as is shown by Todescat to be conventional in the art. It would therefore have been obvious to one of ordinary skill in the art to maintain the

separation and disconnection between the inlet and outlet pipes as taught by Ide and Lee in order to maintain the general flow patterns of those references.

### ***Conclusion***

19. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Stimpert whose telephone number is (571)270-1890. The examiner can normally be reached on Mon-Fri 7:30AM-4:00PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Devon Kramer can be reached on (571) 272-7118. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/William H. Rodríguez/  
Primary Examiner, Art Unit 3741

/P. S./  
Examiner, Art Unit 3746  
7 April 2011